

true colloidal solutions of a more or less viscous characteristic.” (page 4, column 1, lines 39-44). The paragraph preceding page 2, column 1, lines 39-44 of Le Gloahec makes clear that “The specially prepared product” of line 39 refers to the alkalino-calco-alginate complex compound. Thus, it is clear in Le Gloahec that the powder products – “milk chocolate drinks sold in powdered form, ice cream powder” (page 4, column 2, lines 8-12) - are final products that will not come into contact with an algin solution.

The preceding paragraph makes clear that an algin solution will not be applied in any manner to, in the words of claim 1, “powder particles” “which comprise free surface fat”, much less that “lecithin and alginate in water or an aqueous liquid are sprayed onto” “powder particles” “which comprise free surface fat”.

2. Also in the Continuation of Section 11 of the Advisory Action, the Examiner refers to Le Gloahec stating the advantages of using alginous materials with dairy products. However, none of those advantages relate to powders. Instead, those advantages relate to products that need stabilization. As was quoted above: “The specially prepared product, either in powder form or in solution, can be added directly to the dairy products: ice-cream mix, cream, chocolate drink to obtain stabilization. It brings about true colloidal solutions of a more or less viscous characteristic.” (page 4, column 1, lines 39-44). Powders do not need such stabilization, and it is not beneficial to make powders “true colloidal solutions of a more or less viscous characteristic.”

Furthermore, it cannot be said that “dairy products or the like” and “of any milk product or other product” inherently discloses the use of alginate on food powders. To establish inherency, the extrinsic evidence “must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.” *Continental Can Co. v. Monsanto Co.*, 948 F.2d 1264, 1268, 20 U.S.P.Q.2D (BNA) 1746, 1749 (Fed. Cir. 1991). “Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.” *Id.* at 1269, 20 U.S.P.Q.2D (BNA) at 1749 (quoting *In re Oelrich*, 666 F.2d 578, 581, 212 U.S.P.Q. 323, 326 (C.C.P.A. 1981)).

3. The Examiner refers to the advantage that alginous material will act in the form of a particle coating. However, the advantage of an alginous material particle coating is disclosed only in the present application, not in Le Gloahec.

4. With respect to the obviousness of applying alginate to powder particles, the present application acknowledges that using an emulsifying agent, for example, lecithin, in the instantisation of food powders is known. However, the present application points out that the use of alginates in instantisation has not been described previously, and this relates to the fact that by the addition of alginates to fluids, the fluids are thickened and assume very high viscosity, even when adding small amounts, and this very high viscosity counteracts the instantisation. (Page 2, second paragraph). Accordingly, it would not have been obvious to spray alginate onto powder particles.”

STATEMENT OF SUBSTANCE OF INTERVIEW

During the interview, the applicants' attorney said that Le Gloahec discloses adding alginates to wet material to obtain, for example with respect to ice-cream mix, remarkable smoothness and melting qualities (page 4, left column, lines 46-50). The applicants' attorney added that the powders of Le Gloahec are final products, obtained by dehydrating wet products, wherein the alginates were added in making the wet products.


Examiner Williams stated that, even though alginates were added in making wet products, the powders formed by dehydrating the wet products would still have the advantages of the alginates when the powders were reconstituted. She added that, when the disclosure of Le Gloahec was considered in connection with the disclosure of Fitzpatrick of spraying lecithin onto milk powder, one of ordinary skill would be able to reach the conclusion that alginates could also be sprayed onto the milk powder.

The applicants' attorney stated that what might be obvious from the consideration of the Fitzpatrick and Le Gloahec references by one of ordinary skill, without knowledge of the present invention, would be to add alginates to wet material, as disclosed by Le Gloahec, in order to obtain the benefits of the alginates and then, after the wet material is dehydrated to produce a powder, as is also disclosed by Le Gloahec, to spray the powder with lecithin to obtain the benefits of the lecithin. The applicants' attorney added that applying the alginate in a manner that is not disclosed in Le Gloahec (spraying onto the powder), when the manner just described is disclosed in Le Gloahec (adding to the wet material), requires some ingenuity (in the absence of knowledge of the present invention), and is not obvious from the references themselves.

Examiner Shosho indicated that the Examiners would consider the arguments made during the interview, if the arguments were submitted in writing. By presenting the substance of the interview above, those arguments have been submitted in writing. Accordingly, consideration of them is respectfully requested.

Respectfully submitted,

Date: 10-27-10


John P. Shannon
Registration No. 29,276

Serial No. 10/585,132

Merek, Blackmon & Voorhees, LLC
673 South Washington Street
Alexandria, VA 22314
(703) 684-5633
Customer No. 48234

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

on 10-27-10 .



John P. Shannon